IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 138 of 1986
With
FIRST APPEAL No. 139 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HIRABHAI LALABHAI VAGHRI - Appellant(s)
Versus
NEW GUJARAT SYNTHETICS LTD NO1 - Defendant(s)

==========

Appearance :
MR MB GANDHI for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/09/2006

COMMON ORAL JUDGMENT

1. As both these appeals arise out of the common judgment and decree passed by the learned City Civil Court, Ahmedabad, they are being disposed

of by this common judgment and order.

2. The First Appeal No. 138 of 1986 is arising out of the judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 6th December, 1985 passed in Civil Suit No.1250 of 1981. The First Appeal No. 139 of 1986 is arising out of the judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 6th December, 1985 passed in Civil Suit No.1386 of 1981. The First Appeal No. 138 of 1986 is filed by the original plaintiff challenging the judgment and decree passed by the learned City Civil Court, Ahmedabad, by which the learned City Civil Court, Ahmedabad, dismissed the Civil Suit No.1250 of 1981. The First Appeal No. 139 of 1986 is filed by the original defendant Nos.1 and 2 of Civil Suit No.1386 of 1981 challenging the judgment and decree passed by the learned City Civil Court, Ahmedabad, by which the learned trial Court has decreed the said suit and restrained permanently the defendants – appellants herein from entering into or passing

through the Final Plot No.73 belonging to the plaintiff and also obstructing the original plaintiff from making any construction on the land of Final Plot No. 73 and the defendants are also permanently restrained from damaging or demolishing any construction standing on plaintiff's Final Plot No.73. The learned trial Court also declared that the defendants are not entitled to have any right of easement of way through Final plot No.73 of the plaintiff of Civil Suit No.1386 of 1981.

3. The dispute was with regard to the right of easement of way claimed by the occupants of Final Plot No. 72 against the occupant – owner of Final Plot No. 73 of TP Scheme No. 16 of Shaherkotda, Ahmedabad. The original plaintiffs in both the suits have prayed for permanent prohibitory injunctions against each other and the plaintiff of Civil Suit No.1250 of 1981 further prayed for a mandatory injunction requiring the defendant of that suit to demolish the construction, which is there on the alleged

way. As such, both the aforesaid Civil Suits were cross suits. The facts narrated in Civil Suit No.1250 of 1981, which will also cover the facts of Civil Suit No.1386 of 1981, are that according to the plaintiff of Civil Suit No.1250 of 1981, he has got about five to six huts in Final Plot No.72 and he has been residing in the said huts and he has been cultivating the remaining portion of Final Plot No.72 since the time of his ancestors. The Final Plot No. 73 is to the west of aforesaid Final Plot No. 72 and it belongs to the defendant. According to the plaintiff, the defendant is also the owner of Final Plot No. 74 and the Final Plot No.74 was after leaving and adjacent to disputed Final Plot No.73. It was the case of the plaintiff that he has got a right of easement of necessity through the Final Plot Nos.73 and 74 and that there is no other way except the suit way for going to the Final Plot No.72. It is required to be noted that initially the plaintiff did not describe the location of the suit way, however, by way of amendment in the plaint, the plaintiff

made out a case that the suit way was 20 fts wide and was passes from the middle of the Final Plot No.73. According to the plaintiff, the suit way was east to west and it joins the north-south public road, which is known as “Amdupura-Naroda Road.” According to the plaintiff, the suit way passes through both the Final Plot Nos. 73 and 74. It was contended that the defendant was trying to persuade the plaintiff to surrender his right of way by accepting money and when the plaintiff refused, the defendant – company made all the preparation on 16th May, 1981 – a holiday – for construction of two godowns without keeping open the suit way. It was averred that if the defendants succeed to make the said construction, the suit way would be blocked and he would not be able to go to his land of Final Plot No.72. Another suit was filed by the defendant of Civil Suit No.1250, which was a cross suit. The defendant of Civil Suit No. 1250 of 1981 resisted the suit by filing its written statement at Exh.14 contending inter alia that there was a public road kept open at

the time of preparation of TP Scheme No. 16 and the said road touches south-west portion of Final Plot No.72 and the said road joins the Amdupura-Naroda Road and that the plaintiff has been using the said road, which is a public road and the said road is in between the boundaries of Final Plot Nos.73 and 74. The defendant further contended that it is the owner of only Final Plot No.73 and not of Final Plot No.74. It was further contended by the defendant that the plaintiff has also got a way to the east of Final Plot No.72, which road goes towards Vahora's Roza and the plaintiffs has been using that way also. It was further contended that the plaintiff has also got one more way, which was to the south of Final Plot No.72. In substance, it was the contention on behalf of the defendant that the plaintiff has other ways also and the allegation of the plaintiff that he has no other way for going to Final Plot No.72 was denied.

4. The learned trial Court raised the issues in Civil Suit No.1250 of 1981 at Exh.33 and in

Civil Suit No.1386 of 1981 at Exh.16. Parties adduced evidence in Civil Suit No.1250 of 1981. The plaintiff came to be examined at Exh.41. On the side of the plaintiff, Shri Dahyabhai Hirabhai, Shri Gopaldas Laxmandas Rathod and Shri Kalidas Hirabhai were examined at Exhs.46, 60 and 84 respectively. On the other hand, the defendant examined its Senior Assistant Engineer Shri Govindlal Ratanlal and Photographer one Shri Prafulkumar Shantilal at Exhs.86 and 115 respectively. The defendant No.3 of Civil Suit No.1386 of 1981 did not adduce any oral evidence. The question, which was posed before the learned trial Court was that *"whether the plaintiff has any right of way by way of easement of necessity and that he was using the suit way since last more than 60 years or not."* On appreciation of documentary as well as oral evidence, the learned trial Court held that the plaintiffs did not have any right of easement by way of necessity through defendant's Final Plot No.73 as averred in para – 3 and 3(A) of the suit. The learned trial Court also held that the

plaintiffs failed to prove that they have been using the suit way since last more than 60 years. So far as Civil Suit No.1386 of 1981 is concerned, the learned trial Court while decreeing the said suit held that the plaintiff has proved that the defendants have no right of way through plaintiffs Final Plot No.73 and that the defendants have failed to prove that they have got the way by easement of necessity through the Final Plot No.73. Accordingly, the learned trial Court dismissed the Civil Suit No.1250 of 1981 and decreed the Civil Suit No.1386 of 1981.

5. Shri M.B.Gandhi, learned advocate appearing on behalf of the appellant, has taken this Court through the relevant reasoning and findings of the learned trial Court as well as the relevant evidence. On considering the same, more particularly, the evidence, the learned trial Court has rightly held that the plaintiff of Civil Suit No.1250 of 1981 has failed to prove that he was having any right of easement of way

of necessity through defendant's Final Plot No. 73. On appreciation of evidence, the learned trial Court has also rightly held that the plaintiffs of Civil Suit No.1250 of 1981 has failed to prove that they have been using the suit way since last more than 60 years. On considering the judgment and decree and relevant record shown by the learned advocate appearing on behalf of the appellant, it cannot be said that the learned trial Court has committed any error in dismissing the Civil Suit No.1250 of 1981 and in decreeing the Civil Suit No.1386 of 1981. This Court is in complete agreement with the reasoning and findings of the learned trial Court in dismissing the Civil Suit No.1250 of 1981 and decreeing Civil Suit No.1386 of 1981.

6. For the reasons stated above, both the appeals fail and they are accordingly dismissed. However, there shall be no order as to costs. Ad-interim relief, if any, stands vacated forthwith.

[M.R.SHAH, J.]

kdc